

RUSH OF BUSINESS IN THE COURTS

BUSHELS OF OPINIONS CONTRIBUTED BY JUDGES.

Judge Edwards Does Not Refrain From Scarcity in a Winton Borough School Board Case and Continues the Injunction—Judge Archbald Discussed at Length the Costs of the Olyphant Borough Case and Sets Aside Most of the Report of the Auditor—Other Cases Disposed of.

Midsummer day in court had its usual big raft of business, the judges contributing a bushel of opinions and the attorneys an untold number of motions on matters that have been accumulating during the dog days recess.

The exceptions to the report of W. W. Lathrop, the auditor appointed to pass upon the appeal of the borough of Olyphant from the report of the borough auditors, was discussed at length by Judge Archbald. The hearing before the auditor was confined to the single matter in dispute, the accounts of M. W. Cummings, secretary of the borough, and the borough auditor under the borough ordinance of electric light rates.

The auditor ruled the borough auditors had no authority to settle the accounts of the secretary of the council, as they are not appointed to do, or of anyone appointed to collect the charges made for the use of electric lights furnished by the borough. In this court concurs, saying that in the list of officers who must account to the municipal auditors, the secretary is a creature of council, is answerable to that body alone.

The whole report, Judge Archbald rules, except the part of it in which the auditor draws the above conclusion, must be set aside, and the borough auditor is ordered to collect the amount that which it was beyond his power to go into.

REGARDING COSTS.

In dealing with the matter of costs, Judge Archbald says: "The act of April 15, 1834 (sec. 163, P. L. 555), authorizes the township as well as the accounting officer to appeal from the report of the township auditors, and by this must be intended borough auditors as well, the word township being used in its generic sense. . . . In the case of an appeal, the costs are to abide the event of the suit as in other cases, which means, of course, that the losing party is to pay the costs."

"At first blush in the present instance this would seem to put the costs upon the taxpayers by whom the appeal has been taken, but upon further consideration it will be found that this is not correct. While they are the parties who by leave of law have set the proceedings in motion, the real appellant is the borough or township on whose behalf and for whose benefit the appeal is made. This is shown by direct reference to the terms of the statutes quoted which give a taxpayer the right to 'make in behalf of the borough, township, ward or district the appeal allowed' by law.

"It is true a reconnoissance must be entered into by the persons so appealing, with one or more sufficient parties. . . . but this is for the protection of the township or borough in whose name the appeal stands and which is thereby in danger, as a party, of having the costs put upon it. The municipality, however, brought the litigation, is a real party to it and not merely a nominal one, and its responsibility for the costs follows accordingly. The liability of the taxpayers and their sureties, if they fail to reimburse the borough, may come later. The appeal is brought therefore, at the cost of the borough of Olyphant."

One of the interesting Winton municipal muddles was discussed at length by Judge Edwards. It was that embroiled in the case of the school board Taylor and others against the school district of the borough of Winton and others. The bill of complaint alleges that the Winton school board accepted the bid of Brennan & Collins for the erection of a school house at the price of \$10,815, which was \$2,965 in excess of the bid of the Peck Lumber company and that this acceptance was the result of improper and fraudulent practices.

PRELIMINARY INJUNCTION.

A preliminary injunction was granted and at the hearing to continue the rule permanently the school board came into court and on admitting a resolution declaring that they had reconsidered their action and 'resolved' that it was on second thought improper to accept an excessive bid and so on, asked that the rule against themselves be made permanent.

"It is somewhat refreshing," Judge Edwards remarks, "to find defendants coming into court, even at a late hour, in a repentant mood, confessing the wrong and asking the court to make the injunction against them permanent. If there is anything inconceivable in a borough government it ought to be inconceivable that a board of school directors, the custodians of the public funds and trustees for the public, should accept a bid from one party \$2,965 in excess of the bid of another party equally responsible, the whole contract being from eight to ten thousand dollars. But it is unnecessary to discuss this phase of the case at the present time. The allegations of the bill are substantially confessed by the defendants and unless other rights are imperiled, the injunction must be continued."

"The claim of Brennan & Collins that the contract had been executed to them before the injunction issued can be established at law if it is a valid claim, the court rules and discharges the rule allowing them to intervene as defendants. The preliminary injunction is continued until further order of court."

In the case of Anthony Mahon and wife against the Life Insurance Clearing company of St. Paul, Judge Edwards ruled the affidavits of defense were sufficient to prevent judgment on all the plaintiffs' claim except that part of it which involves the premiums on Policies Nos. 3476 and 2475. On these two policies the plaintiffs are entitled to judgment.

FIRE INSURANCE CASE.

In the case of Henry Belin, Jr., against the St. Paul Fire and Marine Insurance company, of Minnesota, the rule to set aside service of summons is made absolute by Judge Edwards. He rules that inasmuch as the property insured and the company are both outside the state the court here has no jurisdiction.

In the case of J. E. Jodrey against

PAVE ASSESSMENT IS DECLARED NULL

INEQUITABLE COST OF THE MULBERRY ASPHALT.

Judge Archbald Renders a Decision Which Knocks Out the Assessment for Paving Mulberry Street and Incidentally Halts the Improvement of Providence Road—Foot-Front Rule Where it Works Inequalities Will Not Stand—Probable Substitute Plan.

The most important decision yesterday in court, and, in fact, one of the most important decisions that has been handed down recently, was that in which Judge Archbald annuls the Mulberry street paving assessment and incidentally the Providence road improvements.

The finding was made in the case stated between the city of Scranton and Henry T. Koehler, better known as the Mulberry street assessment case. The special facts of the case as succinctly set forth by Judge Archbald in his review are these: The assessment was made by the city engineer according to the foot-front rule. Through several of the blocks a double street car track is laid. The abutting property owners on such blocks having to put up with the annoyance of the double tracks and passing cars deemed it proper that there should benefit from the rebate which comes by reason of the street car company paving between its tracks. The city engineer, however, figured up the total square yardage of the pavement for the entire length of the street and divided the cost thereof according to the total foot frontage. Thus making property holders who had no car tracks in front of their properties pay for the pavement of the blocks on which the car tracks were laid, and compelling those who had car tracks passing their properties pay for more pavement than was actually laid before their premises.

BILL WAS NOT QUASHED.

Judges Edwards and Gunter Overrule Motion to Kill Mr. Kelley's Bill of Particulars.

The respondent's bill of particulars in the Langstaff-Kelley contest stands. A motion to have it quashed was argued at length before court yesterday morning and from the expressions from the bench it was expected that the motion would prevail. Much to the surprise of Mr. Holgate and Mr. Hamilton, however, Judge Edwards, at the opening of the afternoon session, handed down an order denying the motion to quash. Judge Gunter concurred but Judge Edwards dissented.

When the matter was called up Mr. Holgate, representing Contestant Langstaff, moved to quash the bill on the ground that it was not filed within the time prescribed by court and because it was a factual bill of generalities instead of bill of particulars. It alleged, Mr. Holgate pointed out, that 12,000 voters of this county voted under age, among those so accused being the president of the county, the members of the board of supervisors, the general manager of the Delaware, Lackawanna and Western Railroad company, the president of select council, and hundreds like them, whom, Mr. Kelley, from his business experience, must have known were twenty years of age. "He certainly knew," as a county official, that the president of this county was over twenty-one," Mr. Holgate remarked, amid much laughter, "and when he swore that, in his having, and illegally, was the case, he did not make affidavit in good faith and his bill consequently is defective."

JUDGE ARCHBALD AGREED. Judge Archbald agreed with Mr. Holgate that the bill was nothing more or less than a big farce; being full of defects for which the contestant's first bill was quashed. "I don't see it that way. As he understood it the Langstaff bill was quashed solely on the ground that it alleged more defective votes in some districts than the whole number of votes cast for the respondent."

Referring to the Tribune's dissection of the bill at the time it was filed, Judge Edwards remarked that from a glance at the hundred or more names of the city's best men who were charged with having voted illegally, by voting under age or voting without naturalization papers, there was no question in his mind that there was gross negligence in the compiling of the bill.

The Newcomb at this juncture took a hand in the discussion, arguing that these very exceptions had been taken to the contestant's bill, but the only one sustained was that alleging that more voters were attacked than votes were cast. "That is the only limitation put upon the contestant's bill and that was the only limitation the respondents believed they had to observe."

Judge Gunter did not enter into the discussion.

CITY NOTES.

Cards of thanks, resolutions of condolence, obituary poetry and the like will be inserted in The Tribune only when paid for in advance, at the rate of 20 cents per line.

The Stone Cutters will meet for reorganization this evening at Hubert's hall, 17 Wyoming avenue.

The Delaware and Hudson company paid yesterday at the Powderly and Carbonade No. 1 mines.

There will be a meeting of the Central Women's Christian Temperance union this afternoon at 3 o'clock.

A regular meeting of the board of managers of the Florence Crittenton Home will be held this morning at 9:30 o'clock.

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The management had arranged to give the exhibition in Lancaster, Harrisburg and Williamsport last week, but, owing to the rainy weather, were only able to fill their date in the first-named place. Even there—though billed for Monday night—they were unable to show until Thursday on account of the rain. The enthusiasm was so great that they were persuaded to give another night there, but rain on Friday compelled them to postpone it until Saturday. This left four unfilled dates for last week and readily explains the necessity of postponing the spectacle here.

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8-Quart Milk Cans, was 10 cents. Sale price 4c Nutmeg Graters, was 4c. Sale price 1c Enameled Drinking Cups, was 10 cents. Sale price 4c Enameled Basting Spoons, was 10 cents. Sale price 4c Galvanized Soap Dish, was 10 cents. Sale price 4c

Enameled Pie Plates, 9-inch size, was 10c. Sale price 4c Ladies' and Misses' Gauze Underwear, worth 10 cents. Sale price 4c Bone Hair Pins, were 10c a dozen. Sale price, dozen 4c Fine Engraved Table Tumblers, worth 5c each. Sale price, per half dozen 20c Ladies' Leather Belts, nickel buckles, was 19 cents. Sale price 10c Ladies' Shirt Waist Sets, gilt or silver, was 10c. Sale price, a set 6c Chain Pin Sets, 3 pins connected with chain, only 10c Balance of our Gilt Belts, worth 35 to 75c. Sale price 24c Wire Tea or Coffee Strainer, black wood handle, was 4 cents. Sale price 1c

Then you can get a vote on the Ben Hur Bicycle.

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